

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANTHONY DALE, BRETT JACKSON,
JOHNNA FOX, BENJAMIN BORROWMAN,
ANN LAMBERT, ROBERT ANDERSON, and
CHAD HOHENBERY on behalf of themselves
and all others similarly situated,

Plaintiff

v.

DEUTSCHE TELEKOM AG, T-MOBILE US,
INC., and SOFTBANK GROUP CORP.,

Defendant.

Case No. 1:22-cv-03189

Hon. Thomas M. Durkin

Hon. Jeffrey Cole

PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs provide the Court with notice of supplemental authority concerning the D.C. Circuit's decision in *New York v. Meta Platforms, Inc.*, --- F.4th ---, 2023 WL 3102921 (D.C. Cir. Apr. 27, 2023), which recently affirmed the lower court's laches determinations, *id.* at *9 (a copy of which is attached hereto as **Exhibit A**).

Plaintiffs cited the lower court's decision for the proposition that courts "use the antitrust laws' four-year statute of limitations as a guideline for evaluating [laches] diligence" element and that the "'presumptive four-year laches period is particularly appropriate for challenges to acquisitions.'" ECF No. 87 at 34 (quoting *New York v. Facebook, Inc.*, 549 F. Supp. 3d 6, 35 (D.D.C. 2021)). Defendants contest this proposition. ECF No. 96 at 17–18.

The D.C. Circuit affirmed, noting that the lower court’s conclusion is “consistent” with Supreme Court jurisprudence and that statutes of limitations are regularly “drawn upon by equity” as determinative of “whether the plaintiff has inexcusably slept on his rights.” *Meta*, 2023 WL 3102921, at *7 (citation omitted). The D.C. Circuit then found the laches element of undue delay satisfied because the plaintiff states there (unlike here) challenged two mergers well after the four-year statute of limitations had expired. *Id.*¹

Respectfully submitted,

Dated: May 11, 2023

/s/ Brendan P. Glackin

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¹ The D.C. Circuit also found the undue delay and prejudice elements to be “related.” *Id.* at *8 (the longer “the merged firms are joined together, the more costly and difficult to separate” and six- or eight-year delays in seeking divestiture “would have severe consequences . . . that would not have existed if the States had timely brought their suit”). Plaintiffs here sued within two years, and the lack of undue delay demonstrates a lack of prejudice, too.

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CERTIFICATE OF SERVICE

I, Brendan P. Glackin, an attorney, hereby certify that this **Plaintiffs' Notice of Supplemental Authority** was electronically filed on May 11, 2023 and will be served electronically via the Court's ECF Notice system upon the registered parties of record.

Respectfully submitted,

/s/ Brendan P. Glackin

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